E. SEARCH INCIDENT TO ARREST

You may search an individual or vehicle as incident to a lawful arrest. Before allowing any evidence seized during the arrest process, the court must first determine if the arrest was lawful. The criteria for this determination is as follows:

1. Was there probable cause to make the arrest and was the probable cause based on:

    a. Good citizen information?
    b. Official reports? (e.g. radio dispatcher)
    c. Reliable informant?

2. Did the officer witness the offense?

You may search the arrested person for contraband, fruits of the crime, instrumentalities, and other evidence. The search of the arrested person is allowed to:

1. Protect the arresting officer.
2. Prevent escape or suicide.
3. Prevent the destruction of evidence.

The search should be made contemporaneously (same time) with the arrest. If the corrections officer discovers evidence as an "incident to incarceration", application must be made to the court for a search warrant. The Alaska Supreme Court has thus far refused to allow seizure of evidence from a corrections officer as an inventory exception to the warrant requirement.

During the search of a person incident to his arrest, if evidence or contraband, which is “immediately apparent,” is inadvertently discovered, it may be seized under the "plain view" doctrine.

When a search is conducted incident to arrest, the items and area searched must be in the immediate presence or physical control of the suspect at the time of arrest.

If a person has been arrested for a violent crime (rape, homicide, assault) you may, as an incident to arrest, search for trace evidence, i.e., pubic combing, hair, swabbing skin for body fluids, swab hands for gun shot residue, fingernail scrapings and like evidence. Clothing of the defendant should be obtained prior to the booking process. If you fail to do so the corrections officer will require a warrant.

If a private person or a security guard makes a search and the evidence is in your "plain view" at the time of your seizure, the evidence is admissible so long as the person who made the search was not acting as your agent.

For seizure of conversations by tape recorder as incident to arrest, see Section L - Participant Monitoring.

SEARCH INCIDENT TO ARREST
SELECTED CASES

DUNCAN v State (Probable Cause to Arrest Based on Information Supplied by Good Citizen) bulletin no. 327. Good citizen called the Anchorage Police Department to report drug activity in front of his store. He informed the dispatcher that the individual had just sold some drugs about a minute before he called the police. He said the same individual had been in front of his store the day before and was selling drugs. He went on to describe the suspect and the clothing he was wearing. Two officers responded. Based on the description given by the good citizen, the officers thought the suspect might be Duncan whom they (the officer) had prior contact with and knew he was involved in drugs. On arrival the officers patted him down and then searched him; cocaine was found in his hatband. Duncan argued that the officers exceeded the lawful scope of a pat-down search. The court ruled that the officers, based on the information supplied by the "good citizen," had ample probable cause to arrest Duncan and that the subsequent search was an incident to that arrest.

TUTTLE v State (Evidence Obtained from Illegal Arrest Must Be Suppressed) bulletin no. 325. Police arrested TUTTLE at a hotel for disorderly conduct. Police found cocaine in the back seat of the patrol car that was used to transport him to jail. The patrol car had been checked by the officer earlier and TUTTLE was the only person who had been in the back seat. Based on this information, police obtained a warrant to search his hotel room where more cocaine and a handgun were seized. TUTTLE argued, successfully, that the evidence (cocaine) must be suppressed because the police lacked probable cause to arrest him for disorderly conduct. The statute requires: (1) make unreasonable noise, (2) with reckless disregard for the fact that this unreasonably loud noise is disturbing the peace and privacy of "at least one other (not the police) person and (3) after being informed that the noise is disturbing someone else's peace and privacy, the person persisted in making unreasonably loud noises after being explicitly warned that the noise was disturbing other people's peace and privacy.

ZEHRUNG v State (Search and Seizure) bulletin no. 1. ZEHRUNG was arrested for failure to appear. During the booking process, the corrections officer found a credit card that turned out to be the property of the victim of a rape/robbery which had occurred several months prior. The evidence was ruled inadmissible because it was not seized by the arresting officer as incident to the arrest, but by the jailer as incident to incarceration. The officer should have obtained a warrant before seizing the credit card at the jail.

JEFFERY ANDERSON v State (ZEHRUNG affirmed – right to post bail prior to booking; inevitable discovery doctrine applies because defendant would have been booked anyway) bulletin no. 282. Subject arrested on outstanding F/A warrant; bail $1,000. Officer failed to inform defendant that he would be given a reasonable opportunity to post bail prior to booking. Corrections officer found a Tupper-ware container containing white powder. The container was given to the arresting officer. Laboratory test later confirmed presence of methamphetamine. Officer then informed defendant of his right to bail. As it turned out defendant was unable to post bail and remained in jail for 4 days. Court ruled that ZEHRUNG still applies and that the officer should have informed ANDERSON of his right to post bail prior to booking but also said the evidence could be admitted under "inevitable discovery doctrine" because the evidence would have been found during the booking process.

CHIMEL v California, 395 US 752 (no bulletin). Limits the search to the arrestee's person and the area within his immediate control. The search for weapons allowed for the safety of the Officer and the prevention of destruction of evidence.

COLEMAN v State (Investigative Stop) bulletin no. 3. Investigative stop of vehicle resulted in seizure of evidence from the floor of the car. Plain view led to probable cause to arrest and subsequent search of the person as incident to the arrest.

McCOY v State (Search Incident to Arrest) bulletin no. 6. After initial "pat down" search at the scene, the defendant was searched 30 minutes later at the police station. The police station is approximately seven

miles from the scene. The Court rules that the second search (at the police station) was contemporaneous with the arrest. Specifically, the second search was performed at the police station not the jail.

AMBROSE v State (Search Incident to Arrest & Bindle (immediately apparent) bulletin no. 346. Pat-down during search incident to arrest resulted in seizure from shirt pocket that contained cocaine. Package could have contained a weapon which justified removal from shirt pocket and "bindle" was "immediately apparent" as single-purpose container used to carry illegal drugs.

DAYGEE v State (Plain View Search of Vehicle) bulletin no. 10. Evidence seized from vehicle after arrest admitted as incident to arrest and not "inventory."

WELTIN v State (Search Incident to Arrest) bulletin no. 13. Drugs found on individual at police station after initial "pat down" at the scene of arrest admitted. The same as McCoy above, the second search was performed at the police station not the jail.

Anchorage v BUFFINGTON et al (Involuntary Chemical Test - OMVI) bulletin no. 21. The Alaska Supreme Court ruled that whereas the seizure of blood for testing in DWI cases is not against the Constitution, it is against the law (the Statute re Implied Consent) as written.

***NOTE**: The Legislature has since revised certain aspects of this statute, which allows blood to be taken without the consent of the defendant under certain circumstances. YOU SHOULD BE AWARE OF ALASKA STATUTE 28.35.035(a), (b) and (c) entitled ADMINISTRATION OF CHEMICAL TESTS WITHOUT CONSENT.*

REEVES v State (Search Incident to Incarceration) bulletin no. 27. Warrantless seizure of a balloon (containing drugs) by a corrections officer during the booking inventory process ruled inadmissible because the balloon was not "immediately apparent" to the corrections officer and the police officer failed to find the balloon during the arrest. The Court ruled that since the police officer missed the evidence during the search incident to the arrest and the corrections officer was not aware of the contents of the balloon, a warrant should have been obtained.

PHILLIPS v State (Search incident to arrest by arresting officer who is also corrections officer) bulletin no. 360. Cordova police officer arrested Phillips for sexual assault. At the police station, which also houses the jail, the officer seized Phillips boots which were sent to the crime laboratory where trace evidence was discovered consistent with the victim's bodily fluids and tissue. Phillips argued this was an inventory search incident to incarceration and that the officer should have obtained a warrant. The court ruled this was a search incident to arrest conducted by the arresting officer and that the officer did not have to obtain a search warrant.

DUNAWAY v New York (Involuntary Seizure of a Person) bulletin no. 33. Subject picked up for questioning, accompanied officers to police station, waived his Miranda rights and subsequently gave a statement admitting his involvement in a homicide. The confession was suppressed because the police lacked "probable cause" to seize (arrest) the defendant. There was nothing to suggest that the defendant consented to accompany the officers to the police station for the interview. Although the police complied with the 5th (self incrimination) and 6th (right to counsel) amendments by obtaining a Miranda waiver, the defendant's 4th amendment (right to unreasonable seizure) right was violated.

SUMDUM v State (Warrantless Entry into Motel Room) bulletin no. 37. The motel manager had assumed guest had left without paying his bill, opened the door to the room while the police were in the public hallway and saw the defendant lying on a bed. Defendant was in the "plain view" of the police and the subsequent search of his person produced evidence that was incident to his arrest.

FREE v State (Stop and Frisk) bulletin no. 39. Informant tip led to "stop and frisk" of defendant which produced a weapon, thus leading to probable cause for arrest and subsequent search of defendant's person.

HINKEL v Anchorage (Search of Purse - Incident to Arrest) bulletin no. 41. Search of purse located in defendant's vehicle after she was handcuffed and locked in police car upheld.

THORNTON v U.S. (Search of Vehicle applies to "recent occupant" when arrested outside vehicle) bulletin no. 280. Police ran a license check of a person who was "acting suspiciously" and learned the tags had been issued to another vehicle. Before the officer could get turned around to stop the vehicle, the driver had parked the vehicle in a lot, locked the doors and was standing near the vehicle. The driver was acting nervous and the officer asked him for identification. THORNTON consented to a "pat-down" and the officer found drugs on his person. The officer then searched his vehicle and found a 9-millimeter pistol under the front seat. Search of vehicle upheld as "incident to arrest."

ARIZONA v GANT, (Search of vehicle as incident to arrest only permissible if the arrestee might be able to access evidence of the offense or a weapon) bulletin no. 338. Subject arrested for DWLS. He was about 12 feet from the vehicle when arrested. He was handcuffed, and placed in a locked police car. The officers searched the vehicle as an incident to arrest and found cocaine in GANT's coat pocket. The court ruled that the evidence must be suppressed because the officers could not reasonably expect to find evidence of the crime for which he was arrested (DWLS) in his vehicle.

DEEMER v State, (Search of vehicle for identification as incident to arrest) bulletin no. 351. Police stopped DEEMER for failure to signal a turn. She lied about her identity but a police officer recognized her. A subsequent record check revealed an outstanding warrant for failure to appear on a prior criminal offense. DEEMER was arrested on the warrant, handcuffed, and placed in the back seat of a police car. The car was searched and on the back seat, in her coat pocket, police found drugs, paraphernalia, a scale and some baggies. Under the front seat a handgun was also found. She was charged with multiple felonies and argued (based on GANT above) that the police had no right to conduct this search. Court ruled the police could make this search as incident to arrest to look for identification because she had given false information when initially concocted and the coat would be a likely place for her to keep identification.

CRAWFORD, Kirk v State. (Search of vehicle's console) bulletin no. 279. CRAWFORD was stopped for speeding. The officer noticed that he was fidgeting in the front seat and kept looking in the mirror (towards the officer) and was making motions inside the vehicle. CRAWFORD refused to get out of the vehicle and the officer forcibly removed him, handcuffed him and placed him in the back of his police car. The officer then returned to CRAWFORD's vehicle and saw a baseball bat between the bucket seats. The officer opened the center counsel and found some crack cocaine and paraphernalia. Because the officer had a real suspicion that CRAWFORD possessed a weapon, he was allowed to look in the console for a weapon.

CRAWFORD appealed this case (CRAWFORD v State, opinion no. 6029 – June 30, 2006) to the state supreme court who upheld the seizure of evidence as an incident to arrest. They stated: "…...that a vehicle's center console can be an item immediately associated with the driver's person. When a driver is seated in the vehicle, the center console can generally serve the same function as clothing pockets; it is commonly used to hold money, a cellular telephone, and personal hygiene items." The search in this case was a valid warrantless search incident to arrest,

LYONS v State (Search of Vehicles Glove Compartment Upheld as Incident to Arrest) bulletin no. 331. Police received information that LYONS had made threats to his former wife and her current husband and that he was en route to their residence. Police waited for his arrival in the parking lot. When he arrived, police instructed him to get out of the car. He did so, and later claimed that he had locked the door in the process. One of the officers present at the scene entered the car and found a handgun in the glove compartment. LYONS was charged with weapons offenses including being a convicted felon in possession of a firearm. Lyons argued that the scope of the search was illegal and that because he was already outside the car when they arrested him, the seizure could not be justified as an "incident to arrest." Court ruled that the (unlocked) glove compartment was within "his immediate control," and the arrest was made immediately upon his exiting the vehicle.

UPTEGRAFT v State (Vehicle Search - Plain View Incident to Arrest) bulletin no. 44. Information developed after armed robbery led to "investigative stop" of suspect vehicle, which subsequently resulted in arrest and search of vehicle.

New York v BELTON (Search of Vehicle Incident to Arrest) bulletin no. 50. Search of jacket found on car seat after arrest upheld.

ELSON v State (Search of Person Incident to Arrest) bulletin no. 51. Cocaine sniffer seized at scene of arrest upheld, however, subsequent seizure of other evidence by jailer ruled inadmissible.

UNGER & CAROTHERS v State (Involuntary Seizure of Person) bulletin no. 53. Police made unlawful entry into private residence to arrest defendant. Although the defendant waived his Miranda rights and voluntarily provided a statement to the police, the statement was suppressed because of the illegal seizure of the defendant.

DUNN v State (Warrantless Seizure of Jacket) bulletin no. 63. Investigatory stop of vehicle suspected of being involved in shooting of a police officer developed probable cause to arrest passenger and subsequent search of a coat found inside vehicle following arrest and handcuffing of suspect upheld.

LINDSAY v State (Involuntary Seizure of Person) bulletin no. 92. Defendant was transported in police vehicle to police station and subsequently gave a statement regarding involvement in a burglary that assisted in the recovery of stolen property. The Court suppressed the confession and the evidence (stolen property) because the defendant had been illegally seized -- the police lacked probable cause to arrest and could not establish that the defendant voluntarily accompanied them to the police station.

STEPHENS v State (Search for Identification Incident to Arrest) bulletin no. 93. At the time of arrest for three counts of assault, the subject refused to identify himself to the arresting officer. The arresting officer searched the subject's wallet for identification and, in the process, found several packets of cocaine. The court ruled that the cocaine could be used at trial because it was inadvertently discovered while the officer was making a legitimate search for identification.

MATHISON v Oregon (no bulletin). Police received information that the subject had committed a burglary, but lacked probable cause to arrest him. A police officer called the subject and asked him to come to the police station for an interview. Subject subsequently confessed. Although there was not probable cause to arrest, the confession was ruled permissible because the subject had voluntarily honored the request of being interviewed at the police station, thereby waiving his fourth amendment right.

SCHMERBER v California 384 US 757 (Involuntary Seizure of Blood From DWI Defendant) (no bulletin). At the time of his arrest for drunk driving, the subject refused to voluntarily furnish a blood sample. The police requested one be taken by a physician. The results were subsequently used against the subject. The court ruled that the blood was properly taken as "destructible evidence" as incident to the arrest and that there was not time for the police to obtain a warrant.

RICKS v State (Search Incident to Arrest) bulletin no. 132. Search of clothing incident to arrest must be in the immediate presence or physical control of the suspect at the time of arrest. In this case, the coat was fifteen feet away from the suspect and the search was suppressed.

DUNBAR v State (Investigative Vehicle Stop Search of Glove Compartment) bulletin no. 134. During a legitimate "Terry stop" and a subsequent frisk for weapons of a suspect in a vehicle, it is permissible to look inside an unlocked glove compartment for weapons since this compartment was in easy reach of the suspects and will be again when the suspects get back in their car. A search of an unlocked glove compartment incident to arrest is also permissible. This only applies to unlocked glove compartments.

Maryland v BUIE (Protective Search of Residence) bulletin no. 139. When executing a warrant in a home or building where there is reasonable suspicion that other people might be in the house that could pose a danger to the arresting officers, a limited sweep of adjoining portions of the house where "an attack could be

launched" can be done. This protective sweep is not a full search incident to arrest, but any material in plain view which the officer had probable cause was evidence of a crime can be seized. **CAUTION**: You may only look in areas were a person could reasonably be expected to hide.

DEAL v State (Search of Vehicle Incident to Arrest - Inadvertent Discovery of Evidence of Another Crime) (no bulletin). While an officer searched a vehicle subject to search incident to arrest, he noticed in plain view evidence of another crime. This material was inadvertently discovered during the search incident to arrest and was immediately apparent as evidence because the person arrested was a suspect in another crime and the evidence was immediately associated with that crime. This is a 1980 case that was referenced in another decision.

GRAY v State (Inventory Search Subject to Incarceration) bulletin no. 149. A person arrested for a minor misdemeanor offense where bail has been set and the person is given a reasonable opportunity to post bail before being incarcerated cannot be subjected to remand and booking procedures, although a pat down search is permissible. In this case, the emptying of pockets is not considered part of a pat down search and drugs found during this search were suppressed.

JACKSON, Sterling v State (Search of Wallet for Weapons as Incident to Arrest) bulletin no. 160. A police officer arrested a person for an outstanding warrant and subsequently searched his wallet (a container) for "atypical weapons" (i.e. razor blades and small knives). A small packet of cocaine was inadvertently discovered during this search. The cocaine discovery was suppressed because under Alaska law, unlike Federal law, each search for weapons in small containers must be justified by specific and articulable facts, which would lead a reasonable person to believe that such an atypical weapon might exist.

THOMAS, Gavis v. State (Search of Wallet by Police Officer as Condition of Probation) bulletin no. 303. THOMAS was on felony probation for first-degree vehicle theft and driving while intoxicated after consuming alcoholic beverages (not drugs). One of the conditions of probation required him to submit to searches for controlled substances. During one such search, a police officer found crack cocaine in his wallet. THOMAS argued that the sentencing judge was in error when he made the search for controlled substances a condition of probation because he had not been convicted of drug related offenses. The court of appeals said the condition was not unreasonable because THOMAS had a prior history of drug abuse and allowing such searches is part of the rehabilitation process and aids in the protection of the public.

BAXTER et al v State. (Traffic Stop Leads To Consent To Search Person And Vehicle, Search Of Wallet As Incident To Arrest And Issuance Of Search Warrant 2 Months Later) bulletin no. 272. North Pole Police Officer stopped Lara JOHNSON for a burned out headlight. She had no drivers license. Officer asked if she was carrying drugs and she replied she was not. She gave the officer consent to search her person and vehicle. Officer noticed a bulge that turned out to be coffee filters and two pill bottles. The coffee filters contained white powder that the officer thought was meth. She was arrested for no valid driver's license. At police station, a more thorough search was conducted. In her wallet was a folded piece of paper containing a list of what the officer thought was items needed for a meth lab. He photocopied the list returning the original to the wallet. Two months later, search warrant issued for JOHNSON'S residence. Three persons present. Discovered a meth lab. All arrested for conspiracy to produce. All searches upheld as consent and incident to arrest. Officer had probable cause to believe evidence of drug enterprise might be in the wallet.

State v LANDON (Search of Convicted Person by Corrections Officer Incident to Incarceration in Prison) bulletin no. 217. Drugs were found during a search of person's personal belongings prior to long-term incarceration in a correctional facility. Since this was a long-term incarceration vs. a person being detained in jail who may shortly post bail, the detailed search was upheld. See Reeves v. State.

SNIDER v State (Search Incident to Arrest) bulletin no. 225. The defendant was arrested for carrying a handgun while intoxicated. During the search of the defendant prior to placement of the defendant in the officer's vehicle, the officer discovered a crack pipe. Based on this fact, a plastic box also found in the defendant's pocket was opened and cocaine was discovered. Probable cause existed for the warrantless search and seizure of the plastic box.

KNOWLES v Iowa (Search of Vehicle Incident to a Traffic Citation) bulletin no. 230. A vehicle was stopped and the driver issued a citation for speeding. The vehicle was searched and drugs were found. Iowa had a statute which allowed for officers to search vehicles as an "incident to a traffic violation." The U.S. Supreme Court ruled the statute was unconstitutional and suppressed the evidence because of the illegal search. The officers did not have the consent of the owner, probable cause, nor could the search be justified as incident to custodial arrest.

Wyoming v HOUGHTON (Search of Passenger's Personal Belongings Inside a Lawfully Stopped Vehicle) bulletin no. 232. A vehicle was stopped for speeding. The driver had a syringe in his pocket and admitted it was used for taking drugs. During a search of the vehicle, they discovered drugs inside the purse of a passenger. The search was upheld. Since they had probable cause to search the vehicle, they also had cause to search everything inside the vehicle that may conceal the object of the search.